IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 3RD OCTOBER 2007 / 11TH ASWINA 1929

Bail Appl..No. 5962 of 2007()

AGAINST THE JUDGEMENT/ORDER IN BA.4771/2007 Dated 07/08/2007
CRIME NO.275/07 OF PARASSASLA POLICE STATION

.....

: PETITIONER/A2

AJIKUMAR S., S/O. SUKUMARAN NAIR,
PUTHUSSERY VEEDU, MURIYATHOTTAM,
PARASSALA P.O.

BY ADV. SRI.SASTHAMANGALAM S. AJITHKUMAR
SRI.SHAJIN S.HAMEED

RESPONDENTS:

THE S.I. OF POLICE,
PARASSALA POLICE STATION, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. S.U. NAZAR.

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 03/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

B.A.NO. 5962 OF 2007

Dated this the 3rd day of October, 2007

ORDER

Application for anticipatory bail. The petitioner is the 2nd accused. He faces allegations for offences punishable, inter alia, under Secs.308 and 324 of the IPC. Investigation is complete. Final report has already been filed. Cognizance has been taken by the learned Magistrate. The matter is pending before the learned Magistrate as committal proceedings. The petitioner was not available for arrest in the course of investigation. He has not entered appearance so far.

2. According to the learned counsel for the petitioner, the petitioner is absolutely innocent. His absence was not wilful or deliberate. The petitioner, in these circumstances, wants to surrender before the learned Magistrate and seek regular bail. The petitioner apprehends that his application for

regular bail may not be considered by the learned Magistrate on merits in accordance with law and expeditiously. It is, in these circumstances, that the learned counsel for the petitioner prays that directions under Sec.438 and/or Sec.482 of the Cr.P.C. may be issued in favour of the petitioner.

3. After the decision in **Bharat Chaudhary and another v. State of Bihar (**AIR 2003 SC 4662), it is by now trite that powers under Sec.438 of the Cr.P.C. can be invoked in favour of a person who apprehends arrest in execution of a non-bailable warrant issued by a court in a pending proceedings. But even for that, sufficient and satisfactory reasons must be shown to exist. I am not persuaded, in the facts and circumstances of this case, that any such reasons exist.

4. It is for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which he could not earlier appear before the learned Magistrate. I have no reason to assume that the learned Magistrate would not consider the petitioner's application for regular bail on merits in accordance with law and expeditiously. No special or specific directions appear to be necessary. Every court must do the same. Sufficient general directions on this aspect have already been issued in the decision

reported in **Alice George v. Deputy Superintendent of Police** (2003 (1) KLT 339).

5. In the result, this application is dismissed; but with the observation that if the petitioner surrenders before the learned Magistrate and seeks bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously – on the date of surrender itself.

Sd/-

(R. BASANT, JUDGE)

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P.S. to Judge